

Federal Housing Finance Agency.

§ 1237.2

§ 1237.1 Purpose and applicability.

The provisions of this part shall apply to the appointment and operations of the Federal Housing Finance Agency ("Agency") as conservator or receiver of a regulated entity. These provisions implement and supplement the procedures and process set forth in the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended, by the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289 for conduct of a conservatorship or receivership of such entity.

§ 1237.2 Definitions.

For the purposes of this part the following definitions shall apply:

Agency means the Federal Housing Finance Agency ("FHFA") established under 12 U.S.C. 4511, as amended.

Authorizing statutes mean—

- (1) The Federal National Mortgage Association Charter Act,
- (2) The Federal Home Loan Mortgage Corporation Act, and
- (3) The Federal Home Loan Bank Act.

Capital distribution has, with respect to a Bank, the definition stated in § 1229.1 of this chapter, and with respect to an Enterprise, the definition stated in § 1229.13 of this chapter.

Compensation means any payment of money or the provision of any other thing of current or potential value in connection with employment.

Conservator means the Agency as appointed by the Director as conservator for a regulated entity.

Default; in danger of default:

(1) *Default* means, with respect to a regulated entity, any official determination by the Director, pursuant to which a conservator or receiver is appointed for a regulated entity.

(2) *In danger of default* means, with respect to a regulated entity, the definition under section 1303(8)(B) of the Safety and Soundness Act or applicable FHFA regulations.

Director means the Director of the Federal Housing Finance Agency.

Enterprise means the Federal National Mortgage Association and any affiliate thereof or the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Entity-affiliated party means any party meeting the definition of an entity-affiliated party under section 1303(11) of the Safety and Soundness Act or applicable FHFA regulations.

Equity security of any person shall mean any and all shares, interests, rights to purchase or otherwise acquire, warrants, options, participations or other equivalents of or interests (however designated) in equity, ownership or profits of such person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest, and any securities or other rights or interests convertible into or exchangeable for any of the foregoing.

Executive officer means, with respect to an Enterprise, any person meeting the definition of executive officer under section 1303(12) of the Safety and Soundness Act and applicable FHFA regulations under that section, and, with respect to a Bank, an executive officer as defined in applicable FHFA regulations.

Golden parachute payment means, with respect to a regulated entity, the definition under 12 CFR part 1231 or other applicable FHFA regulations.

Limited-life regulated entity means an entity established by the Agency under section 1367(i) of the Safety and Soundness Act with respect to a Federal Home Loan Bank in default or in danger of default, or with respect to an Enterprise in default or in danger of default.

Receiver means the Agency as appointed by the Director to act as receiver for a regulated entity.

Regulated entity means:

- (1) The Federal National Mortgage Association and any affiliate thereof;
- (2) The Federal Home Loan Mortgage Corporation and any affiliate thereof; and
- (3) Any Federal Home Loan Bank.

Securities litigation claim means any claim, whether or not reduced to judgment, liquidated or unliquidated, fixed, contingent, matured or unmatured, disputed or undisputed, legal, equitable, secured or unsecured, arising from rescission of a purchase or sale of an equity security of a regulated entity

§ 1237.3

or for damages arising from the purchase, sale, or retention of such a security.

Transfer means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the regulated entity.

Subpart A—Powers

§ 1237.3 Powers of the Agency as conservator or receiver.

(a) *Operation of the regulated entity.* The Agency, as it determines appropriate to its operations as either conservator or receiver, may:

(1) Take over the assets of and operate the regulated entity with all the powers of the shareholders (including the authority to vote shares of any and all classes of voting stock), the directors, and the officers of the regulated entity and conduct all business of the regulated entity;

(2) Continue the missions of the regulated entity;

(3) Ensure that the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets;

(4) Ensure that each regulated entity operates in a safe and sound manner;

(5) Collect all obligations and money due the regulated entity;

(6) Perform all functions of the regulated entity in the name of the regulated entity that are consistent with the appointment as conservator or receiver;

(7) Preserve and conserve the assets and property of the regulated entity (including the exclusive authority to investigate and prosecute claims of any type on behalf of the regulated entity, or to delegate to management of the regulated entity the authority to investigate and prosecute claims); and

(8) Provide by contract for assistance in fulfilling any function, activity, action, or duty of the Agency as conservator or receiver.

(b) *Agency as receiver.* The Agency, as receiver, shall place the regulated entity in liquidation, employing the addi-

12 CFR Ch. XII (1–13 Edition)

tional powers expressed in 12 U.S.C. 4617(b)(2)(E).

(c) *Powers as conservator or receiver.* The Agency, as conservator or receiver, shall have all powers and authorities specifically provided by section 1367 of the Safety and Soundness Act and paragraph (a) of this section, including incidental powers, which include the authority to suspend capital classifications under section 1364(e)(1) of the Safety and Soundness Act during the duration of the conservatorship or receivership of that regulated entity.

(d) *Transfer or sale of assets and liabilities.* The Agency may, as conservator or receiver, transfer or sell any asset or liability of the regulated entity in default, and may do so without any approval, assignment, or consent with respect to such transfer or sale. Exercise of this authority by the Agency as conservator will nullify any restraints on sales or transfers in any agreement not entered into by the Agency as conservator. Exercise of this authority by the Agency as receiver will nullify any restraints on sales or transfers in any agreement not entered into by the Agency as receiver.

§ 1237.4 Receivership following conservatorship; administrative expenses.

If a receivership immediately succeeds a conservatorship, the administrative expenses of the conservatorship shall also be deemed to be administrative expenses of the subsequent receivership.

§ 1237.5 Contracts entered into before appointment of a conservator or receiver.

(a) The conservator or receiver for any regulated entity may disaffirm or repudiate any contract or lease to which such regulated entity is a party pursuant to section 1367(d) of the Safety and Soundness Act.

(b) For purposes of section 1367(d)(2) of the Safety and Soundness Act, a reasonable period shall be defined as a period of 18 months following the appointment of a conservator or receiver.